

AMENDED IN SENATE APRIL 30, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 1422

Introduced by Senator Padilla
(Coauthors: Senators Correa, Hueso, and Lieu)

February 21, 2014

An act to add Sections 58 and 470.5 to the Military and Veterans Code, relating to military courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1422, as amended, Padilla. Military courts: sexual assault: courts-martial.

Existing law provides that the military courts of this state are general courts-martial, special courts-martial, summary courts-martial, and courts of inquiry. Existing law provides that general, special, and summary courts-martial have the power to try and adjudge specified members of the active militia. Existing law establishes various sexual assault offenses, including the offenses of rape, unlawful sexual intercourse, and abduction.

Existing law establishes the Military Department, which includes the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps, and the Naval Militia. Federal laws and regulations governing the United States Army, Navy, Air Force, and National Guard and not in conflict with state law are adopted with respect to the state military forces.

This bill would require the department, on or before ~~March~~ *July* 1 of each year, to report *prescribed information* to the Governor, the

Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs ~~certain information~~ regarding the federal government's *activities relating to* sexual assault prevention and response activities for the previous federal fiscal year, as well as any plans for the prevention of and response to sexual assault in the current federal fiscal year. *response.*

~~This~~

~~The bill would prescribe procedures under which~~ *restrict the authority of the department or the California National Guard* ~~may to~~ assert jurisdiction over cases of ~~rape, sexual assault, forcible sodomy, or an attempt of those offenses, that offense,~~ by a member of the ~~California National Guard active militia when performing military duty under federal law or while on state duty orders, to occasions when a district attorney or other equivalent~~ civilian prosecutorial authority refuses to prosecute on behalf of the state. The bill would require a member of the ~~California National Guard active militia~~ recommended for court-martial pursuant to a specified hearing for ~~any of the previously described offenses~~ *sexual assault, or an attempt of that offense,* to be tried by general court-martial.

~~This~~

~~The bill would prohibit a convening authority from overturning a conviction of rape or sexual assault handed down by a general court-martial. A~~ *Under the bill, no* statute of limitations would ~~not~~ apply to cases subject to the jurisdiction of the military court, and the bill ~~also~~ would require the punishment for a conviction of any of the specified offenses to be issued as directed by the general court-martial, and to include, at a minimum, dismissal or dishonorable discharge.

The bill would define "sexual assault" to include specific crimes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 58 is added to the Military and Veterans
- 2 Code, to read:
- 3 58. Notwithstanding Sections 9795 and 10231.5 of the
- 4 Government Code, on or before ~~March~~ July 1 of each year, the
- 5 department shall report the following information to the Governor,
- 6 the Legislature, the Senate Committee on Veterans Affairs, and
- 7 the Assembly Committee on Veterans Affairs:

1 (a) For the previous federal fiscal year:

2 (1) The policies, procedures, and processes in place or
3 implemented by the Sexual Assault Prevention and Response
4 (SAPR) Program during that federal fiscal year in response to
5 incidents of sexual assault.

6 (2) An assessment of the implementation of the policies and
7 procedures on the prevention, response, and oversight of sexual
8 assaults in the military to determine the effectiveness of SAPR
9 policies and programs, including an assessment of how service
10 efforts executed federal Department of Defense SAPR priorities.

11 (3) Matrices for restricted and unrestricted reports of the number
12 of sexual assaults involving service members, that includes case
13 synopses, and disciplinary actions taken in substantiated cases and
14 relevant information. *Reporting on restricted cases shall be limited*
15 *to aggregated statistical data so that the privacy of victims is*
16 *protected. Reporting on unrestricted cases shall be limited to*
17 *aggregated statistical data, but shall include, at a minimum, the*
18 *following subcategories:*

19 (A) *Types of crimes.*

20 (B) *Types of victims.*

21 (C) *Status of investigations.*

22 (D) *Status of prosecutions.*

23 (E) *Status of department administrative actions.*

24 (4) Analyses of the matrices of the number of sexual assaults
25 involving service members. *The analyses shall include analysis*
26 *of data and trends in comparison to state data from previous years*
27 *and, to the degree possible, comparisons of state data and trends*
28 *and data and trends from other branches and components of the*
29 *United States Armed Forces, including both active and reserve*
30 *components, including the National Guard of other states and*
31 *territories.*

32 (b) For the current federal fiscal year, any plans for the
33 prevention of and response to sexual assault, specifically in the
34 areas of advocacy, healthcare provider and medical response,
35 mental health, counseling, investigative services, legal services,
36 and chaplain response.

37 SEC. 2. Section 470.5 is added to the Military and Veterans
38 Code, to read:

39 470.5. (a) A member of the ~~California National Guard who,~~
40 ~~while on state or federal orders,~~ *active militia who, when*

1 *performing military duty under Title 32 of the United States Code*
2 *or while on state orders, violates a provision of the Penal Code*
3 *for ~~rape, sexual assault, forcible sodomy,~~ or an attempt of any of*
4 *~~these offenses,~~ that offense, shall be prosecuted by the office of*
5 *the district attorney or other equivalent civilian prosecutorial*
6 *authority with appropriate jurisdiction. The Military Department*
7 *or California National Guard may ~~only~~ claim jurisdiction *only**
8 *under the Uniformed Code of Military ~~Justice,~~ Justice (UCMJ) as*
9 *incorporated by this code, if the district attorney, or other*
10 *equivalent civilian prosecutorial authority, refuses to pursue a*
11 *criminal prosecution of a member of the California National Guard.*
12 *that member.*

13 (b) (1) Subject to subdivision~~(b)~~, (a), a member of the
14 ~~California National Guard~~ *active militia* recommended for
15 court-martial pursuant to an Article 32~~(10 U.S.C. Sec. 832)~~ hearing
16 ~~(10 U.S.C. Sec. 832), as authorized by the UCMJ as incorporated~~
17 *by this code, for ~~rape, sexual assault, forcible sodomy,~~ or an attempt*
18 *of ~~any of these offenses~~ that offense, shall be tried by general*
19 *court-martial.*

20 (2) Notwithstanding any other provision of the ~~Uniform Code~~
21 ~~of Military Justice (UCMJ),~~ *UCMJ as incorporated by this code,*
22 a convening authority in the ~~California National Guard,~~ *Guard or*
23 *in the Military Department,* as authorized by the UCMJ as
24 incorporated by this code, shall not overturn a sexual assault ~~or~~
25 ~~rape~~ conviction issued by a general court-martial.

26 (3) A member of the ~~California National Guard~~ *active militia*
27 who is found guilty of ~~rape, sexual assault, forcible sodomy,~~ or an
28 attempt of ~~any of these offenses,~~ *that offense* shall be punished as
29 the general court-martial may direct, subject to Section 456, and
30 shall include, at a minimum, dismissal or dishonorable discharge.

31 (4) There is no statute of limitations for a member of the
32 ~~California National Guard~~ *active militia* to be charged with rape
33 or sexual assault when tried and punished by a general court-martial
34 as provided in this section.

35 (c) *As used in this section, “sexual assault” means conduct*
36 *constituting any of the crimes defined in the following provisions*
37 *of the Penal Code:*

38 (1) *Section 243.4 of the Penal Code.*

39 (2) *Chapter 1 (commencing with Section 261) of Title 9 of Part*
40 *1 of the Penal Code.*

- 1 (3) *Section 286 of the Penal Code.*
- 2 (4) *Subdivision (a) or (b), or paragraph (1) of subdivision (c),*
- 3 *of Section 288 of the Penal Code.*
- 4 (5) *Section 647.6 of the Penal Code.*

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